

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

AARON EUGENE JENNINGS,

Defendant-Appellant.

UNPUBLISHED

September 18, 2003

No. 240349

Cass Circuit Court

LC No. 01-010263-FH

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2), and was sentenced as a fourth habitual offender, MCL 769.12, to ten to twenty years' imprisonment. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was found guilty of entering a home occupied only by children and stealing a VCR and a Sony Play Station. Defendant first argues that a prospective juror tainted the entire pool of jurors when he said that he had gone to high school with some members of "a" Jennings family and that his impression of the family was that they were "[a] lot of trouble always." Noting that this defendant might "well not be related at all" to the family the juror spoke of, the court stated that it would nevertheless be better to excuse the juror since the goal was "to make sure you don't know anyone and could be fair." Defendant has waived his right to review of this issue because he expressed satisfaction with the jury and did not exhaust his peremptory challenges. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000); *People v Hubbard (After Remand)*, 217 Mich App 459, 466; 552 NW2d 493 (1996).

Regardless, there is no reason to believe that jurors would unfairly judge defendant because somebody knew "a" Jennings family that was "a lot of trouble." The comment was never tied to defendant's family and defendant had the opportunity to effectively voir dire the remainder of the jury venire. Therefore, we find that the impartiality of the panel was not compromised and there is no basis for moving to strike the entire venire or for a mistrial.

Defendant next argues that the prosecutor should not have been allowed to cross-examine him regarding his lack of employment, his expenses and resources, or his job prospects. We agree. Evidence of a defendant's poverty or unemployment to show that he is chronically short of funds is not ordinarily admissible to show motive because of its low probative value and high

prejudicial impact. *People v Henderson*, 408 Mich 56, 66; 289 NW2d 376 (1980); see also *People v Johnson*, 393 Mich 488, 496-497; 227 NW2d 523 (1975); *People v Leverette*, 84 Mich App 268, 271, 269 NW2d 559 (1978). Particularly in this case where the charged offense was first-degree home invasion, an ordinary theft crime in which motive is of minimal importance. *Henderson*, *supra* at 66. Thus, we find that it was error for the trial court to permit this line of questioning.

However, we conclude that the error was harmless. Because defendant objected at trial on relevancy grounds, the admission of evidence of defendant's financial condition is a preserved, nonconstitutional error. Defendant has the burden of proving that it is more probable than not that this error resulted in a miscarriage of justice. *People v Lukity*, 460 Mich 484, 494; 596 NW2d 607 (1999). Defendant cites *Johnson*, *supra*, and *Leverette*, *supra*, as support for his assertion that reversal is warranted. We find that these cases are factually distinguishable in one significant respect. In both cases, the prosecutor emphasized the defendant's financial condition and pointed out the inference regarding motive that could be drawn from such evidence. In *Johnson*, the prosecutor specifically told the jury that such an inference could be considered in determining if the defendant committed the charged offense. *Johnson*, *supra* at 496. And in *Leverette*, the prosecutor argued to the jury that because the defendant was unemployed, yet participated in activities requiring money, he must have obtained the money from some criminal activity. *Leverette*, *supra* at 271.

Here, the prosecutor was prohibited from suggesting in her closing argument that defendant's financial situation was his motive for committing the offense. The court also gave the jurors a cautionary instruction advising them that they could not draw any adverse inferences from defendant's financial condition, and may not conclude that defendant committed the offense because of his economic or employment situation. Jurors are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). While we do not condone the prosecutor's line of questioning in this case, we conclude that it is not "more probable than not" that the error in admitting evidence of defendant's financial condition resulted in a miscarriage of justice, and so, reversal is not warranted.

Finally, defendant argues that the prosecutor impermissibly questioned him about why he left the children alone in the house before the police arrived if he was in fact innocent. Defendant claims the questions were designed to either reveal his parole status (the prosecutor was precluded from directly impeaching defendant with his prior conviction for failure to give sufficient notice) or make him appear foolish or evasive in front of the jury as he tried to avoid answering the question. This is one possible interpretation. However, it appears that the prosecutor was trying to impeach defendant's story by showing that, if defendant knew these children as he claimed, it would not have been reasonable to leave them alone after an invasion of their home. Evidence of flight is admissible to show consciousness of guilt. *People v Compeau*, 244 Mich App 595, 598; 625 NW2d 120 (2001). Since the evidence was admissible for a proper purpose and counsel did not object at trial on the ground that the prosecutor was trying to establish something improper, we find that there was no error affecting defendant's

substantial rights and defendant is not entitled to reversal of his conviction. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Affirmed.

/s/ Michael R. Smolenski

/s/ William B. Murphy

/s/ Kurtis T. Wilder